



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18<sup>TH</sup> STREET - SUITE 300

DENVER, CO 80202-2466

Phone 800-227-8917

<http://www.epa.gov/region08>

September 28, 2006

Ref: 8ENF-L

SENT VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Robert S. Cohen, Registered Agent for  
Agridyne, LLC  
One W Old State PL, Suite 600  
Springfield, IL 62701

Re: Proceeding to Assess Class II Civil Penalty  
Under Section 311 of the Clean Water Act,  
Agridyne LLC, Cheyenne Facility

Dear Mr. Cohen:

The United States Environmental Protection Agency (EPA) is issuing the enclosed Administrative Complaint and Notice of Opportunity For Hearing (Complaint) to Agridyne LLC for an alleged violation of the Clean Water Act (the Act) at its Cheyenne facility (facility) located at 705 Dunn Avenue, Laramie County, Cheyenne, Wyoming. The Complaint is issued pursuant to Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990.

EPA alleges in the Complaint that Agridyne failed to prepare and submit to EPA a facility response plan (FRP) for the facility in accordance with Section 311(j)(5)(A) of the Act, 33 U.S.C. § 1321(j)(5)(A), and the FRP regulations set forth in subparts A and D of 40 C.F.R. Part 112. Pursuant to 40 C.F.R. 112.20(a)(2) and 112.20(a)(2)(ii), the owner or operator of a non-transportation-related onshore facility in operation on or after August 30, 1994, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines and that satisfies the criteria in 40 C.F.R. § 112.20(f)(1), is required to prepare and submit an FRP to the Regional Administrator in accordance with the requirements of the section. Agridyne did not prepare an FRP for the Cheyenne facility prior to commencing operations in May 2003. The Complaint proposes a penalty of \$133,474 based on the alleged violation.



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Agridyne has the right to a hearing to contest the factual allegations in the Complaint. If it admits the allegations, or the allegations are found to be true after it has had an opportunity for a hearing, it has the right to contest the penalty proposed in the Complaint. A copy of EPA's administrative procedures is enclosed for Agridyne's review. Please note the requirements for an Answer set forth in 40 C.F.R. §§ 22.15 and 22.38. If Agridyne wishes to contest the allegations in the Complaint or the penalty proposed in the Complaint, it must file a written Answer within thirty (30) days of receipt of the enclosed Complaint with the EPA Regional Hearing Clerk at the following address:

Ms. Tina Artemis, Regional Hearing Clerk (8RC)  
U.S. EPA, Region 8  
999 18<sup>th</sup> Street, Suite 300  
Denver, CO 80202-2466

If Agridyne fails to request a hearing, it will waive its right to formally contest any of the allegations set forth in the Complaint. If Agridyne fails to file a written answer or pay the proposed penalty within the time limits, a default judgement may be entered pursuant to 40 C.F.R. § 22.17. This judgement may impose the penalty proposed in the Complaint. Provided that the Complaint is legally sufficient, the Presiding Officer will then find Agridyne liable for a civil penalty, and the Regional Administrator may then assess against it the civil penalty amount proposed by EPA.

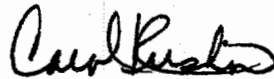
Whether or not Agridyne requests a hearing, we encourage you to confer informally with EPA concerning the alleged violation or the amount of the proposed penalty to negotiate a settlement in lieu of proceeding with a formal hearing. Agridyne has the right to be represented by an attorney at any stage of the proceedings, including any informal discussions with EPA, but it is not required. To arrange for such a conference, please contact Amy Swanson, Enforcement Attorney, Legal Enforcement Program, at the number provided below. A request for an informal conference does not extend the thirty (30) day period for filing Agridyne's Answer and/or requesting a hearing. Public Notice of EPA's Complaint and the opportunity to provide written comments on the Complaint is being provided pursuant to Section 311(b)(6)(C)(I) of the Act, 33 U.S.C. § 1321(b)(6)(C)(I). In the event that no hearing is held under Section 311(b)(6)(B) of the Act, 33 U.S.C. § 1321(b)(6)(B), any person who comments on the proposed penalty assessment may participate in a hearing on the penalty if requested pursuant to Section 311(b)(6)(C)(iii) of the Act, 33 U.S.C. § 1321(b)(6)(C)(iii).

A Small Business Regulatory Enforcement Fairness Act (SBREFA) information sheet, *U.S. EPA Small Businesses Resources*, containing information on compliance assistance resources and tools available to small businesses, is enclosed with this letter. SBREFA does not eliminate Agridyne's responsibility to comply with the Act or respond to this information request, nor does it create any new rights or defenses under law.

If Agridyne has any questions regarding the Complaint, the most knowledgeable people on my staff regarding these matters are Amy Swanson and Jane Nakad. Ms. Swanson is in our Legal Enforcement Program and can be reached at (303) 312-6906. Ms. Nakad is in our Technical Enforcement Program, and can be reached at (303) 312- 6202.

We urge Agridyne's prompt attention to this matter.

Sincerely,



Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance and  
Environmental Justice

Enclosures: Complaint and Notice of Opportunity for Hearing  
Consolidated Rules of Practice, 40 C.F.R. Part 22  
SBREFA Information Sheet  
Public Notice  
Notice of SEC Disclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2006 SEP 28 PM 2:43

IN THE MATTER OF	)	Docket No. CWA-08-2006-0048
	)	
Agridyne LLC	)	<b>ADMINISTRATIVE COMPLAINT</b>
P.O. Box 7510	)	<b>AND NOTICE OF OPPORTUNITY</b>
Springfield, IL 62791	)	<b>FOR HEARING</b>
	)	
Agridyne Facility-Cheyenne, WY	)	Proceeding to Assess Class II Civil Penalty Under
SPCC#WY05001	)	Clean Water Act Section 311 for FRP Violation

**AUTHORITY**

1. This is a civil administrative action issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 311(b)(6)(B)(ii) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990. The Administrator has properly delegated this authority to the undersigned EPA official. This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules") set forth at 40 C.F.R. Part 22, a copy of which is enclosed.

**GENERAL ALLEGATIONS**

2. Section 311(j)(5)(A) of the Act, 33 U.S.C. § 1321(j)(5)(A), provides that the President shall issue regulations requiring each owner or operator of certain facilities to "submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance."

3. By Section 2(d)(1) of Executive Order 12777 (October 18, 1991), the President delegated to the Administrator of EPA the authorities under Section 311(j)(5)(A) of the Act.

4. The Administrator of EPA promulgated regulations, codified within subparts A and D of 40 C.F.R. Part 112 ("the FRP regulations"), implementing these delegated statutory authorities.

5. Part 112 applies to any owner or operator of a non-transportation-related onshore or offshore facility engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products, which, due to its location, could reasonably be expected to discharge oil in quantities that may be harmful, as described in part 110, into or upon the navigable waters of the United States or adjoining shorelines that has oil in any aboveground container. 40 C.F.R. § 112.1(b).

6. EPA promulgated a regulation, set forth at 40 C.F.R. § 110.3, specifying what quantities of oil may be harmful to the public health or welfare or the environment. That regulation provides that such quantities of oil include discharges that either violate applicable water quality standards, or cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines, or cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.

7. Pursuant to 40 C.F.R. §§ 112.20(a) and (a)(2), the owner or operator of a non-transportation-related onshore facility in operation on or after August 30, 1994, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines and that satisfies the criteria in 40 C.F.R. §112.20(f)(1) shall prepare and submit to the Regional Administrator a facility response plan ("FRP") in accordance with the requirements of the section (along with a completed version of the response plan cover sheet contained in Appendix F).

8. 40 C.F.R. § 112.20(a)(2)(ii) provides that for a newly-constructed facility that commences operation after August 30, 1994, and is required to prepare and submit a response plan based on the criteria in section 112.20(f), the owner or operator shall submit the response plan, along with a completed version of the response plan cover sheet contained in Appendix F to 40 C.F.R. Part 112, to the Regional Administrator prior to the start of operations.

9. Pursuant to 40 C.F.R. § 112.20(f), facilities that could cause "substantial harm" to the environment in the event of a discharge into navigable waters include those with a total oil storage capacity of 1 million gallons or more, and that do not have adequate secondary containment for each aboveground storage area, are located such that a discharge could cause injury to fish and wildlife or sensitive environments, or would shut down a public drinking water intake.

10. Respondent, Agridyne LLC ("Respondent"), is a corporation organized under the laws of the State of Illinois and authorized to do business in the State of Wyoming.

11. Respondent is a "person" within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5).

12. Respondent is the "owner or operator" within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2 of the Agridyne facility ("facility") located at 705 Dunn Avenue, Cheyenne, Laramie County, Wyoming.

13. The facility consists of two 490,278 gallon bulk tanks, one 275 gallon tote, and up to 14 rail tanker cars with a total storage capacity of 20,000 to 23,000 gallons each.

14. The facility is located less than 500 feet from a storm sewer which drains directly into Crow Creek, a perennial stream, approximately one-half mile from the storm sewer inlet.

15. Crow Creek is a "navigable water" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 112.2.

16. Respondent is engaged in producing, gathering, storing, processing, refining, transferring, distributing, or consuming "MIX 30" at the facility.

17. "MIX 30" is a liquid ruminant feed consisting of a blend of corn and/or soy co-products and at least 10% vegetable fat and is an oil or oil product within the meaning of 40 C.F.R. § 112.2.

18. The facility is a non-transportation-related facility within the meaning of 40 C.F.R. § 112.2 Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.

19. The facility is an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

20. The facility has a total oil storage capacity greater than or equal to 1 million gallons.

21. The facility does not have secondary containment for each aboveground storage area sufficiently large to contain the capacity of the largest aboveground oil storage tank within each storage area plus sufficient freeboard to allow for precipitation.

22. The facility is located at a distance such that a discharge from the facility could cause injury to the following fish or wildlife: Bald eagle, Wyoming toad, Black-footed ferret, Platte River Species, Mountain plover, Preble's meadow jumping mouse, Whooping crane, Least tern, Mexican spotted owl, Colorado butterfly plant, and/or Ute ladies tresses orchid.

23. The facility is located at a distance such that a discharge from the facility could cause injury to the following sensitive environments: Medicine Bow National Forest, Hutton

Lake National Wildlife Refuge and/or Curt Gowdy State Park.

24. The facility is a non-transportation related, onshore facility within the meaning of 40 C.F.R. § 112.2 that, due to its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines, within the meaning of Section 311(j)(5)(B)(iii) of the Act, 33 U.S.C. § 1321(j)(5)(B)(iii), and 40 C.F.R. § 112.20(f)(1) (“an FRP-regulated facility”).

25. Respondent, as the owner and/or operator of an FRP-regulated facility, is subject to the FRP regulations.

**COUNT 1**  
**(Duty to Submit FRP, Newly-constructed Facility)**

26. The facility was constructed and commenced operations in May 2003.

27. Pursuant to Section 311(j)(5) of the Act and 40 C.F.R. § 112.20(a)(2)(ii), the owner or operator of a newly constructed FRP-regulated facility that commenced operation after August 30, 1994, must submit an FRP prior to commencing operations that satisfies the requirements of Section 311(j)(5) of the Act, 33 U.S.C. § 1321(j)(5), and 40 C.F.R. §§ 112.20(a)(2) and 112.20(a)(2)(ii).

28. Respondent did not prepare and submit a response plan for the facility in accordance with 311(j)(5) of the Act, 33 U.S.C. § 1321(j)(5), and 40 C.F.R. §§ 112.20(a)(2) and 112.20(a)(2)(ii), prior to commencing operations or any time thereafter.

29. Respondent’s failure to submit a compliant FRP, along with a completed response plan cover sheet, constitutes a continuing violation of 40 C.F.R. §§ 112.20(a)(2) and (a)(2)(ii) and Section 311(j)(5) of the Act, 33 U.S.C. § 1321(j)(5).



30. As alleged in the preceding paragraph, and pursuant to section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$11,000 per day for each day during which the violation continues, up to a maximum of \$157,500.

### **PROPOSED PENALTY**

Based on the forgoing Allegations, and pursuant to the authority of Section 311(b)(6)(B)(ii) of the Act and 40 C.F.R. § 19.4, Complainant proposes the assessment of administrative penalties against the Respondent in the amount of \$133,474. Complainant proposes this penalty amount after considering the applicable statutory penalty factors in Section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8): (1) Respondent's alleged violations, the seriousness of the violations, the economic benefit to the violator resulting from the violations, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other factors as justice may require. Specifically, the proposed penalty amount is based on Respondent's major non-compliance and potential major environmental impact for a duration of at least 40 months with a major degree of culpability. The Respondent did not qualify for any penalty reduction based on mitigation factors. No additions were made to the proposed penalty amount based on either a history of violations or economic benefit. The Complainant proposes that the Administrator issue a Final Order assessing administrative penalties in the amount of \$133,474.

### **TERMS OF PAYMENT FOR QUICK RESOLUTION**

If Respondent does not contest the findings and penalty proposal set forth above, this action may be resolved by paying the proposed penalty in full pursuant to 40 C.F.R. § 22.18. If such payment is made within 30 calendar days of receipt of this Complaint, no Answer need be filed. For more time for payment, Respondent may file a statement agreeing to pay the penalty within 30 days of receipt of the Complaint, then pay the money within 60 days of such receipt.

In either case, your payment shall be made by a cashier's or certified check, or by an electronic funds transfer (EFT). If you are paying by check, pay the check to "Environmental Protection Agency," noting on the check "OSTLF-311" and the docket number. If you use the U.S. Postal Service, address the payment to "U.S. Environmental Protection Agency, P.O. Box 371099M, Pittsburgh, PA 15251"; if you use a private delivery service, address the payment to "Mellon Client Service Center, ATTN: Shift Supervisor, Lockbox 371099M Account 9109125, 500 Ross Street, Pittsburgh, PA 15262-0001."

If you are paying by EFT, you must instruct your agent to transfer funds to "Mellon Bank, ABA 043000261, Account 9109125, 22 Morrow Drive, Pittsburgh, Pa. 15235." (In the case of an international transfer of funds, use the SWIFT address MELNUS3P.) Pursuant to 40 C.F.R. § 22.18(a)(1), you must file a copy of your check with the Regional Hearing Clerk at the address provided below. For EFT transfers, you must instead file a copy of your EFT confirmation with the Regional Hearing Clerk. In either case, you shall simultaneously send a copy of the check or EFT confirmation to the following person at the address below:

Jane Nakad  
Technical Enforcement Program (8ENF-UFO)  
U.S. EPA Region 8  
999 18<sup>th</sup> Street, Suite 300  
Denver, CO 80202-2466

Payment of the penalty in this manner does not relieve Respondent of its obligation to comply with the requirements of the statute and regulations. Payment of the penalty in this manner shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing on this matter.

### **OPPORTUNITY TO REQUEST HEARING**

In your answer to this Complaint you may, pursuant to Section 311(b)(6) of the Act and 40 C.F.R. § 22.15(c), request a hearing on any material fact alleged in this Complaint, or on the appropriateness of any penalty it proposes. Even if you do not explicitly request a hearing in your Answer, the Presiding Officer may hold such a hearing if your Answer raises issues appropriate for adjudication. The procedures for any such hearing and for all proceedings in this action are set out in 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint.

Default constitutes an admission of all facts alleged in this Complaint and a waiver of your right to a hearing on such factual allegations. In order to avoid default in this matter, you must within 30 days after receipt of this Complaint either (1) settle this matter with the Complainant; (2) file a written statement that you agree to pay the proposed penalty in this Complaint with the Regional Hearing Clerk at the address provided below, and subsequently pay the proposed penalty no later than 60 days after receiving this Complaint, subject to the terms of 40 C.F.R. § 22.18(a)(1); or (3) file both an original and one copy of a written Answer to this Complaint with:

Ms. Tina Artemis, Regional Hearing Clerk (8RC)  
U.S. EPA Region 8  
999 18<sup>th</sup> Street, Suite 200  
Denver, CO 80202-2466

You are also required, pursuant to 40 C.F.R. § 22.5(b) of the enclosed Consolidated Rules of Practice, to provide a contemporaneous copy of any Answer to the Complainant. Complainant's counsel, who is authorized to receive service on behalf of the Complainant, shall be served at the following address:

Amy Swanson, Enforcement Attorney (8ENF-L)  
U.S. EPA Region 8  
999 18<sup>th</sup> Street, Suite 200  
Denver, CO 80202-2466

Pursuant to 40 C.F.R. § 22.15, your Answer shall clearly and directly admit, deny or explain each of the factual allegations contained in this Complaint with regard to which you have knowledge. If you state in your Answer that you have no knowledge of a particular factual allegation, the allegation shall be deemed denied. Otherwise, your failure to admit, deny, or explain any material factual allegation contained in this Complaint constitutes an admission of the allegation. Your Answer shall also state the circumstances or arguments for any defense you wish to assert, challenges to any factual allegation in the Complaint, and any basis you may have to oppose the Complainant's proposed penalty.

Following receipt of your Answer, a Presiding Officer will be assigned. The Presiding Officer will notify the parties of his assignment, and shall notify the parties of the time and place of further proceedings in the case.

### **PUBLIC NOTICE**

Pursuant to Section 311(b)(6)(C)(I) of the Act, 33 U.S.C. §1321(b)(6)(C)(I), the Complainant is providing public notice of and reasonable opportunity to comment on this proposed issuance of a Complaint assessing administrative penalties against you. If a hearing is held on this matter, members of the public who submitted timely comments on this proceeding have the right under Section 311(b)(6)(c) of the Act to be heard and present evidence at the hearing.

### **SETTLEMENT CONFERENCE**

The EPA encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations, and is willing to explore this possibility in an informal settlement conference. If you or your attorney, if you choose to be represented by one, have any questions or wish to have an informal settlement conference with EPA, please call Amy Swanson at (800) 227-8917, extension 6906, or (303) 312-6906. Please note that a request for, scheduling of, or participation in a settlement conference does not extend the period for filing an Answer and request for hearing as set out above. The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in the Consolidated Rules. If a settlement can be reached, its terms must be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the Presiding Officer.

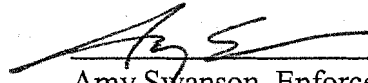
UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8  
Complainant.

Date: 9/28/2006



Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

Date: 9/28/2006



Amy Swanson, Enforcement Attorney  
U.S. EPA, Region 8  
999 18<sup>th</sup> Street, Suite 300 (8ENF-L)  
Denver, CO 80202-2466  
Colorado Atty. Reg. No. 26488  
Telephone: 303/312-6906  
Facsimile: 303/312-6953

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING was hand-carried to the Regional Hearing Clerk, EPA Region 8, 999 18<sup>th</sup> Street, Suite 300, Denver, Colorado, and that a true copy of the same was sent as follows:

Copy via certified mail to:

Robert S. Cohen  
Registered Agent for Agridyne LLC  
One W Old State PL, Suite 600  
Springfield, Illinois 62701

9/28/06  
Date

Judith McTernan  
Judith McTernan

shall also be sent to the Regional Administrator for review. The Regional Administrator shall notify the State, the applicant, and the SBA of any determination subsequently made, in accordance with §21.5, on any such statement.

(i) If within 60 days after notice of such deficiencies has been provided, the State has not taken corrective efforts, and if the deficiencies significantly affect the conduct of the program, the Regional Administrator, after sufficient notice has been provided to the Regional Director of SBA, shall withdraw the approval of the State program.

(ii) Any State whose program is withdrawn and whose deficiencies have been corrected may later reapply as provided in §21.12(a).

(g) Funds appropriated under section 106 of the Act may be utilized by a State agency authorized to receive such funds in conducting this program.

#### §21.13 Effect of certification upon authority to enforce applicable standards.

The certification by EPA or a State for SBA Loan purposes in no way constitutes a determination by EPA or the State that the facilities certified (a) will be constructed within the time specified by an applicable standard or (b) will be constructed and installed in accordance with the plans and specifications submitted in the application, will be operated and maintained properly, or will be applied to process wastes which are the same as described in the application. The certification in no way constitutes a waiver by EPA or a State of its authority to take appropriate enforcement action against the owner or operator of such facilities for violations of an applicable standard.

### PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS

#### Subpart A—General

Sec.

22.1 Scope of this part.

- 22.2 Use of number and gender.
- 22.3 Definitions.
- 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.
- 22.5 Filing, service, and form of all filed documents; business confidentiality claims.
- 22.6 Filing and service of rulings, orders and decisions.
- 22.7 Computation and extension of time.
- 22.8 Ex parte discussion of proceeding.
- 22.9 Examination of documents filed.

#### Subpart B—Parties and Appearances

- 22.10 Appearances.
- 22.11 Intervention and non-party briefs.
- 22.12 Consolidation and severance.

#### Subpart C—Prehearing Procedures

- 22.13 Commencement of a proceeding.
- 22.14 Complaint.
- 22.15 Answer to the complaint.
- 22.16 Motions.
- 22.17 Default.
- 22.18 Quick resolution; settlement; alternative dispute resolution.
- 22.19 Prehearing information exchange; prehearing conference; other discovery.
- 22.20 Accelerated decision; decision to dismiss.

#### Subpart D—Hearing Procedures

- 22.21 Assignment of Presiding Officer; scheduling the hearing.
- 22.22 Evidence.
- 22.23 Objections and offers of proof.
- 22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.
- 22.25 Filing the transcript.
- 22.26 Proposed findings, conclusions, and order.

#### Subpart E—Initial Decision and Motion to Reopen a Hearing

- 22.27 Initial decision.
- 22.28 Motion to reopen a hearing.

#### Subpart F—Appeals and Administrative Review

- 22.29 Appeal from or review of interlocutory orders or rulings.
- 22.30 Appeal from or review of initial decision.

#### Subpart G—Final Order

- 22.31 Final order.
- 22.32 Motion to reconsider a final order.

#### Subpart H—Supplemental Rules

- 22.33 [Reserved]
- 22.34 Supplemental rules governing the administrative assessment of civil penalties under the Clean Air Act.
- 22.35 Supplemental rules governing the administrative assessment of civil penalties under the Federal Insecticide, Fungicide, and Rodenticide Act.
- 22.36 [Reserved]
- 22.37 Supplemental rules governing administrative proceedings under the Solid Waste Disposal Act.
- 22.38 Supplemental rules of practice governing the administrative assessment of civil penalties under the Clean Water Act.
- 22.39 Supplemental rules governing the administrative assessment of civil penalties under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.
- 22.40 [Reserved]
- 22.41 Supplemental rules governing the administrative assessment of civil penalties under Title II of the Toxic Substances Control Act, enacted as section 2 of the Asbestos Hazard Emergency Response Act (AHERA).
- 22.42 Supplemental rules governing the administrative assessment of civil penalties for violations of compliance orders issued to owners or operators of public water systems under part B of the Safe Drinking Water Act.
- 22.43 Supplemental rules governing the administrative assessment of civil penalties against a federal agency under the Safe Drinking Water Act.
- 22.44 Supplemental rules of practice governing the termination of permits under section 402(a) of the Clean Water Act or under section 3008(a)(3) of the Resource Conservation and Recovery Act.
- 22.45 Supplemental rules governing public notice and comment in proceedings under sections 309(g) and 311(b)(6)(B)(ii) of the Clean Water Act and section 1423(c) of the Safe Drinking Water Act.
- 22.46–22.49 [Reserved]

#### Subpart I—Administrative Proceedings Not Governed by Section 554 of the Administrative Procedure Act

- 22.50 Scope of this subpart.
- 22.51 Presiding Officer.
- 22.52 Information exchange and discovery.

AUTHORITY: 7 U.S.C. 1361(i); 15 U.S.C. 2615; 33 U.S.C. 1319, 1342, 1361, 1415 and 1418; 42 U.S.C. 300g–3(g), 6912, 6925, 6928, 6991e and 6992d; 42 U.S.C. 7413(d), 7524(c), 7545(d), 7547, 7601 and 7607(a), 8609, and 11045.

SOURCE: 64 FR 46178, July 23, 1999, unless otherwise noted.

#### Subpart A—General

##### §22.1 Scope of this part.

(a) These Consolidated Rules of Practice govern all administrative adjudicatory proceedings for:

(1) The assessment of any administrative civil penalty under section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (7 U.S.C. 1361(a));

(2) The assessment of any administrative civil penalty under sections 113(d), 205(c), 211(d) and 213(d) of the Clean Air Act, as amended (42 U.S.C. 7413(d), 7524(c), 7545(d) and 7547(d));

(3) The assessment of any administrative civil penalty or for the revocation or suspension of any permit under section 105(a) and (f) of the Marine Protection, Research, and Sanctuaries Act as amended (33 U.S.C. 1415(a) and (f));

(4) The issuance of a compliance order or the issuance of a corrective action order, the termination of a permit pursuant to section 3008(a)(3), the suspension or revocation of authority to operate pursuant to section 3005(e), or the assessment of any civil penalty under sections 3008, 9006, and 11005 of the Solid Waste Disposal Act; as amended (42 U.S.C. 6925(d), 6925(e), 6928, 6991e, and 6992d)), except as provided in part 24 of this chapter;

(5) The assessment of any administrative civil penalty under sections 16(a) and 207 of the Toxic Substances Control Act (15 U.S.C. 2615(a) and 2647);

(6) The assessment of any Class II penalty under sections 309(g) and 311(b)(6), or termination of any permit issued pursuant to section 402(a) of the Clean Water Act, as amended (33 U.S.C. 1319(g), 1321(b)(6), and 1342(a));

(7) The assessment of any administrative civil penalty under section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9609)

(8) The assessment of any administrative civil penalty under section 321 of the Emergency Planning and Community Right-To-Know Act of 1980 (“EPCRA”) (42 U.S.C. 11045);

(9) The assessment of any administrative civil penalty under section

1ST PAGE ONLY





*Office of Enforcement and Compliance Assurance*  
**INFORMATION SHEET**

## U. S. EPA Small Business Resources

If you own a small business, the United States Environmental Protection Agency (EPA) offers a variety of compliance assistance and tools to assist you in complying with federal and state environmental laws. These resources can help you understand your environmental obligations, improve compliance and find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

### Hotlines, Helplines and Clearinghouses

EPA sponsors approximately 89 free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements.

The National Environmental Compliance Assistance Clearinghouse provides quick access to compliance assistance tools, contacts, and planned activities from the U.S. EPA, states, and other compliance assistance providers:  
[www.epa.gov/clearinghouse](http://www.epa.gov/clearinghouse)

Pollution Prevention Clearinghouse  
[www.epa.gov/opptintr/library/ppicindex.htm](http://www.epa.gov/opptintr/library/ppicindex.htm)

EPA's Small Business Ombudsman Hotline provides regulatory and technical assistance information.  
(800) 368-5888

Emergency Planning and Community Right-To-Know Act  
(800) 424-9346

National Response Center (to report oil and hazardous substance spills)  
(800) 424-8802

Toxics Substances and Asbestos Information  
(202) 554-1404

Safe Drinking Water  
(800) 426-4791

Stratospheric Ozone Refrigerants Information  
(800) 296-1996

Clean Air Technology Center  
(919) 541-0800

Wetlands Helpline  
(800) 832-7828

### EPA Websites

EPA has several Internet sites that provide useful compliance assistance information and materials for small businesses. If you don't have access to the Internet at your business, many public libraries provide access to the Internet at minimal or no cost.

EPA's Home Page  
[www.epa.gov](http://www.epa.gov)

Small Business Assistance Program  
[www.epa.gov/ttn/sbap](http://www.epa.gov/ttn/sbap)

Compliance Assistance Home Page  
[www.epa.gov/compliance/assistance](http://www.epa.gov/compliance/assistance)

Office of Enforcement and Compliance Assurance  
[www.epa.gov/compliance](http://www.epa.gov/compliance)

Small Business Ombudsman  
[www.epa.gov/sbo](http://www.epa.gov/sbo)

Innovative Programs for Environmental Performance  
[www.epa.gov/partners](http://www.epa.gov/partners)



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 8  
999 18th Street, Suite 300, Denver, CO 80202-2466**

**PUBLIC NOTICE OF PROPOSED ADMINISTRATIVE PENALTY ASSESSMENT AND  
OPPORTUNITY TO COMMENT ON CWA COMPLAINT**

**Action:** EPA is providing notice of a proposed administrative penalty assessment and the opportunity to comment on the proposed assessment (complaint) for alleged violations of the Clean Water Act.

**Summary:** EPA is authorized in Class II proceedings under Section 311(b)(6) of the Clean Water Act ("CWA"), 33 U.S.C. § 1321(b)(6), to issue orders assessing civil penalties for violations of the CWA and implementing regulations, after providing the person subject to the penalty notice and opportunity for a hearing, and after providing the public with notice of the proposed penalty, opportunity to submit written comments and to participate in a Class II penalty proceeding, if any. The deadline for submitting public comment is thirty days after issuance of this notice.

On September xx, 2006, EPA commenced a civil administrative action by filing a complaint against the Respondent identified below, alleging a violation of the CWA and its regulations. Pursuant to Section 311(b)(6)(C) of the CWA, EPA hereby notifies the public of this proposed penalty assessment:

In the matter of:     Agridyne, LLC  
                             P.O. Box 7510  
                             Springfield, IL 62791

EPA Docket Number: CWA-08-2006- 0048

Proposed penalty in the Complaint: \$133,474

Alleged violations: Failure to prepare and submit a Facility Response Plan as required by 40 C.F.R. §§ 112.20(a)(2) and (a)(2)(ii), regulations issued under Section 311(j) of the CWA.

Submit written comments to:     Tina Artemis  
   Regional Hearing Clerk (8RC); EPA Region 8  
   999 18th Street, Suite 300;  
   Denver CO 80202-2466  
Telephone:     (303) 312-6765.

**FOR FURTHER INFORMATION:** Persons wishing to receive a copy of the Consolidated Rules, the Complaint, or other documents in this proceeding, or to comment upon the proposed penalty assessment, or any other aspect of the matter, should contact the Regional Hearing Clerk identified above. The administrative record for the proceeding is located in the EPA Region 8 Hearing Clerk Office identified above and the file will be open for public inspection during normal business hours. No action will be taken by EPA to finalize a settlement in this matter until 30 days after this public notice.

## NOTICE OF SECURITIES AND EXCHANGE COMMISSION REGISTRANTS' DUTY TO DISCLOSE ENVIRONMENTAL LEGAL PROCEEDINGS

Securities and Exchange Commission regulations require companies registered with the SEC (e.g., publicly traded companies) to disclose, on at least a quarterly basis, the existence of certain administrative or judicial proceedings taken against them arising under Federal, State or local provisions that have the primary purpose of protecting the environment. Instruction 5 to Item 103 of the SEC's Regulation S-K (17 CFR 229.103) requires disclosure of these environmental legal proceedings. For those SEC registrants that use the SEC's "small business issuer" reporting system, Instructions 1-4 to Item 103 of the SEC's Regulation S-B (17 CFR 228.103) requires disclosure of these environmental legal proceedings.

If you are an SEC registrant, you have a duty to disclose the existence of pending or known to be contemplated environmental legal proceedings that meet any of the following criteria (17 CFR 229.103(5)(A)-(C)):

- A. Such proceeding is material to the business or financial condition of the registrant;
- B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or
- C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than \$100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

Specific information regarding the environmental legal proceedings that must be disclosed is set forth in Item 103 of Regulation S-K or, for registrants using the "small business issuer" reporting system, Item 103(a)-(b) of Regulation S-B. If disclosure is required, it must briefly describe the proceeding, "including the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought."

You have been identified as a party to an environmental legal proceeding to which the United States government is, or was, a party. If you are an SEC registrant, this environmental legal proceeding may trigger, or may already have triggered, the disclosure obligation under the SEC regulations described above.

This notice is being provided to inform you of SEC registrants' duty to disclose any relevant environmental legal proceedings to the SEC. This notice does not create, modify or interpret any existing legal obligations, it is not intended to be an exhaustive description of the legally applicable requirements and it is not a substitute for regulations published in the Code of Federal Regulations. This notice has been issued to you for information purposes only. No determination of the applicability of this reporting requirement to your company has been made by any governmental entity. You should seek competent counsel in determining the applicability of these and other SEC requirements to the environmental legal proceeding at issue, as well as any other proceedings known to be contemplated by governmental authorities.

If you have any questions about the SEC's environmental disclosure requirements, please contact the Office of Chief Counsel in the SEC's Division of Corporation Finance. The phone number is (202) 942-2900.